



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0189; FRL-9961-81-Region 6]

Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Partial Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of effectiveness of final rule.

SUMMARY: By a letter dated April 14, 2017, EPA announced the convening of a proceeding for reconsideration of certain requirements in the final rule promulgating a Federal Implementation Plan (FIP) for the State of Arkansas addressing regional haze and interstate visibility transport under the Federal Clean Air Act (the Act, or CAA). The rule was published in the Federal Register on September 27, 2016. The EPA is administratively staying for 90 days the effectiveness of the rule requirements that are under reconsideration. The EPA is adding language to the Code of Federal Regulations (CFR) to reflect this stay.

DATES: Certain portions of 40 CFR 52.173(c)(7) and (25), as specified in this document, are administratively stayed from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The addition of 40 CFR 52.173(e) in this rule is effective from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this reconsideration proceeding under Docket ID No. EPA-R06-OAR-2015-0189. All documents in the docket are available electronically at <http://www.regulations.gov> and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, TX, 75202-2733. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

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SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 2016 (81 FR 66332), EPA (“we”) published a rule titled “Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan” (Arkansas Regional Haze FIP or FIP) addressing certain requirements of the Regional Haze Rule at 40 CFR 51.308 and the CAA regarding interference with other states’ programs for visibility protection (interstate visibility transport) triggered by the issuance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) and the 1997 fine particulate matter (PM_{2.5}) NAAQS.¹

The Arkansas Department of Environmental Quality (ADEQ) submitted a petition to the EPA dated November 22, 2016, seeking reconsideration and an administrative stay of specific portions of the final Arkansas Regional Haze FIP pursuant to section 307(d)(7)(B) of the CAA

¹ 81 FR 66332; *see also* 81 FR 68319 (October 4, 2016) (correction).

and section 705 of the Administrative Procedure Act (APA). Similar petitions were submitted by Entergy Arkansas Inc., Entergy Mississippi Inc., and Entergy Power LLC (collectively Entergy) and the Arkansas Electric Cooperative Corporation (AECC), owners of Flint Creek, White Bluff, and Independence facilities and the Energy Environmental Alliance of Arkansas (EEAA). Under section 307(d)(7)(B) of the CAA, the Administrator shall commence a reconsideration proceeding if, in the Administrator's judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to 90 days during such reconsideration.

In a letter dated April 14, 2017, EPA announced the convening of a proceeding for reconsideration under section 307(d)(7)(B) of the compliance dates for the NO_x emission limits for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2. Further, based on statements by Entergy regarding the limited future operations of White Bluff, the EPA also determined to grant reconsideration of the SO₂ emission limits for Units 1 and 2 at the facility. We granted reconsideration of these provisions of the FIP because the grounds for Petitioners' objections arose after the close of the comment period and are of central relevance to the outcome of the final rule pursuant to Clean Air Act section 307(d)(7)(B). The EPA did not specifically request comment on the 18-month compliance dates for NO_x controls in the FIP, and reconsideration will allow for additional public comment on these issues. In addition, new information clarified the intent of Entergy's comments regarding future operations at White Bluff and indicated that reconsideration of the SO₂ best available retrofit technology (BART)

emission limits based on a shorter remaining useful life is warranted. Finally, as we are reconsidering the compliance dates for the NO_x emission limits at Independence, we are also reconsidering the compliance dates for the SO₂ emission limits for Independence Units 1 and 2 to ensure that the schedule for compliance for these emission limits is coordinated. The EPA did not take action on the remaining issues in the petitions for reconsideration of the Arkansas FIP. A copy of this letter is included in the docket, Docket ID No. EPA-R06-OAR-2015-0189.

We will prepare a notice of proposed rulemaking that will provide ADEQ, Entergy, AECC, EEAA and the public an opportunity to comment on the issues identified above as well as any other matter we believe will benefit from additional comment.

II. Partial Stay of Certain Provisions of the FIP

The EPA hereby issues a 90 day stay from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** of the effectiveness of 40 CFR 52.173(c)(7) and (25) with regards to the compliance dates for the NO_x emission limits for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2, and the compliance dates for the SO₂ emission limits for White Bluff Units 1 and 2 and Independence Units 1 and 2. We are amending the Code of Federal Regulations to reflect this stay. This stay does not apply to any other provisions of the rule. If the EPA is unable to complete final action on reconsideration prior to the conclusion of this stay, we will consider granting a further stay of the rule. This stay, however, does not alter or extend the ultimate compliance timeframes set out in the final FIP. The EPA intends to propose a future rulemaking to extend the deadlines to account for the period of the stay or to account for another alternative proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility.

Dated: April 17, 2017.

E. Scott Pruitt,
Administrator.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E--Arkansas

2. Amend § 52.173 by adding paragraph (e) to read as follows:

§52.173 Visibility protection.

* * * * *

(e) Paragraphs (c)(7) and (25) of this section relating to the compliance dates for the NO_x emission limits for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2, as well as the compliance dates for the SO₂ emission limits for White Bluff Units 1 and 2 and Independence Units 1 and 2, are stayed from **[INSERT DATE OF FEDERAL REGISTER PUBLICATION]** until **[INSERT DATE 90 DAYS AFTER FEDERAL REGISTER PUBLICATION]**, when the stay will automatically terminate.

[FR Doc. 2017-08253 Filed: 4/24/2017 8:45 am; Publication Date: 4/25/2017]